

RESIDENTIAL MORTGAGE BROKERS AND LENDERS
CHAPTER 80-11-1
DISCLOSURE, ADVERTISING AND OTHER REQUIREMENTS

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80-11-1-.01 Disclosure Requirements.

(1) Written disclosure required before acceptance of fees. Any person required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("Article 13") must make the following disclosures in writing to the applicant prior to accepting an application fee, property appraisal fee, credit report fee, or any other third-party fee from an applicant for a residential mortgage loan.

(a) The amounts of the application fee, the credit report fee, the property appraisal fee and/or any other third-party fees;

(b) Whether all or any part of such fees or charges is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fees or charges is refundable;

(c) The specific services which will be provided or performed for the application fee;

(d) In cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program. Further, lender or broker may not use the terms "closing" or "settlement" to refer to a transaction unless the transaction meets the definition of settlement in paragraph (2) of this rule.

(2) For purposes of this Rule, the term "settlement" or "closing" means the process of executing legally binding documents regarding a lien on residential property and the disbursement of funds necessary to effect the transaction. Where a federally required right of rescission applies to a transaction, the settlement or closing date will be the date the binding documents are signed, not the disbursement date.

(3) Some or all of the disclosures required by paragraph (1) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws.

(4) The disclosures required in paragraph (1) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the lender or broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraph (1) must be included in the mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender. In instances of applications taken by telephone, the disclosures required by paragraph (1) must be mailed or delivered to the applicant with a request

that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or lender.

(5) For purposes of paragraph (1) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.

(6) Good Faith Estimate to be provided by broker. Every broker, including every home improvement dealer and manufactured home dealer required to be licensed or registered under Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required by federal law.

(7) Good Faith Estimate to be provided by Lender. Every lender required to be licensed or registered under Article 13 shall provide applicants for mortgage loans the good faith estimate disclosure as required by federal law.

(8) Foreclosure Disclosure.

(a) Every lender, and every broker who closes mortgage loans in the broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding of such loans (i.e. table funding), required to be licensed or registered under Article 13 shall disclose in writing to each applicant for a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the applicant's property through foreclosure. The disclosure shall be made at or before the time of settlement. The disclosure shall include the following language in at least ten-point bold-faced type:

"O.C.G.A. § 7-1-1014(3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure."

(b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.

(c) This disclosure requirement may be satisfied by a substantially similar disclosure as required by federal law.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-261.

80-11-1-.02 Advertising Requirements.

Any advertisement of a mortgage loan that is subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

(a) Advertisements for mortgage loans shall not be false, misleading, or deceptive.

(b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.

(c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name, license number, valid unique Nationwide Mortgage Licensing System and Registry (NMLSR) identifier, and an office address of the licensee or registrant advertising the mortgage loan, which name, address, and license number shall conform with the name, license number, valid unique NMLSR identifier and office address on record with the Department of Banking and Finance.

(d) All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 in any media, whether print or electronic, shall contain the words "Georgia Residential Mortgage Licensee" or, if an entity is licensed in more than one state, the licensee's advertisement may list Georgia as a state in which the licensee is licensed.

(e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.

(f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.

(g) Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.

(h) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-1004.3; § 7-1-1012; § 7-1-1016.

80-11-1.03 Place of Business Requirements; Definitions.

(1) Each licensee, if it has or is required to have a physical place of business in Georgia, shall provide to the department a complete listing of all such offices or locations.

(2) An applicant for a broker's license must have a physical place of business in this state if the broker's home state requires one.

(3) A "physical place of business" in this state shall mean an enclosed room or building where the broker alone, if it has no employees, otherwise where one or more supervised employees conduct a residential mortgage business.

(4) A location, including a personal residence, shall be considered a branch for purposes of the Georgia Residential Mortgage Act if any of the following conditions are met:

(a) The location address is printed on or contained in letterheads, business cards, announcements, advertisements, solicitations for business, flyers, brochures, or the like;

(b) Georgia consumers are received at the location or are directed to deliver any information by any means to the location;

(c) Loan files, applications (approved, denied, pending and pre-qualification) and any other books and records required by Georgia Residential Mortgage Act or department rules are located at the location;

(d) The location is used to meet the licensing standards in O.C.G.A. Section 7-1-1003.1 and Department Rule 80-11-1-.03; or

(e) The licensee directly or indirectly reimburses for rent, utility bills or other expenses incurred for use of a location as a branch.

(5) Notwithstanding Paragraph (4) of this rule, a location, including a personal residence, will not be deemed a branch and will be required to have its own license if:

(a) It is a franchise arrangement;

(b) It is separate entity that may be referred to as a "net branch," and it is an independent business or mortgage operation which is not under the direct control, management, supervision and responsibility of the licensee;

(c) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management, and supervision of the licensee;

(d) All employees exempt from individual licensing, including the branch manager, do not meet the requirements for such exemption in Article 13 and the rules of the department;

(e) All assets and liabilities of the branch are not assets and liabilities of the licensee and income and expenses of the branch are not income and expenses of the licensee and are not properly accounted for in the financial records and tax returns of the licensee; or

(f) All practices, policies, and procedures, including but not limited to those relating to employment and operations, are not originated and established by the licensee and are not applied consistently to the main office and all branches.

(6) An unstaffed storage facility shall not constitute a branch.

(7) The “main office” is the location indicated on the application as the principal place of business, where the books and records are kept.

(8) The mailing address of a licensee or registrant may be different from the main office address but shall be the address where the department is authorized to send all correspondence, official notices and orders. The licensee or registrant is responsible for keeping the department informed of any changes in this mailing address.

(9) The “contact person for consumer complaints” referred to in Code Section 7-1-1006 shall be a person who is available and has authority to investigate and resolve questions and complaints from consumers which have come to the department for resolution. Each licensee must keep the department informed of the name and telephone number of the current contact person.

Authority O.C.G.A. §7-1-61; O.C.G.A. §7-1-1012.

80-11-1.04 Branch Managers.

(1) A “branch manager” shall mean a person who supervises daily activities in Georgia of a licensee, whether at a main or branch location, and regardless of job title.

(2) No branch manager shall be permitted to manage a location in Georgia without being approved by the department. A branch manager may be put in place subject to departmental approval, but the department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the branch manager of more than one location of a licensee unless the licensee can demonstrate that the proposed branch manager will be able to effectively manage these locations to ensure that they operate in compliance with state and federal law, and that the manager can adequately supervise the daily functions performed by the employees at the locations. In order to qualify for the employee exemption, an employee must be supervised on a daily basis by the licensee. Considerations by the department in determining whether a branch manager may supervise more than one location will include: proximity of branches to each other, volume of business at each, experience level of proposed manager and plans to handle the supervision.

(3) The department shall conduct a background check, obtain a credit report, and require a financial statement and such other pertinent information as it may require to satisfy itself that the location will be operated by the branch manager responsibly and in compliance with the laws and rules of this state.

(4) The applicant must submit two sets of fingerprints, along with a money order or certified check payable to the department in the appropriate amount set by the department in order for the department to cause to be administered the expanded background check as required by O.C.G.A. § 7-1-1004 (k).

Authority O.C.G.A. § 7-1-61; § 7-1-1006; § 7-1-1012.

80-11-1-.05 Employee Background Checks; Covered Employees.

(1) As required by O.C.G.A. §7-1-1004(k), applicants and licensees must complete background checks on all covered employees. Covered employees include those employees who physically work in the state of Georgia and who may enter, delete or verify any information on any mortgage loan application form or document. Employees of a licensee or applicant who are not involved in the mortgage loan business are not covered employees. Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee within ninety (90) days of the initial date of hire. Employers should submit background information to the proper law enforcement authorities promptly upon initial hire in order to meet the ninety (90) day requirement. A background check must be initiated for a person in the employ of a licensee or applicant within ten (10) days of the date of initial hire.

(2) The term “mortgage loan application form or document” shall mean any prospective borrower’s personal electronic or printed information and documents, including but not limited to bank statements, W-2 forms, income tax returns, employment records, and other personal financial information required to be submitted in the course of making an application for a mortgage loan. It also includes documents maintained and generated by the licensee in the course of the application and administration of the mortgage loan, including but not limited to electronic or printed/written information on the mortgagor and their loan, including personal and loan database information, payments and payment history information, past due reports and schedules, coupon books, information generated for tax purposes, including escrow information, and any other information generated which would include the financial and loan history of the mortgagor. Documents would also include computer displays of personal and mortgage loan information on an individual borrower or client which may be disseminated by the licensee’s personnel in the course of verifying information for customers and other business related inquiries.

(3) Applicant’s and licensee’s requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations (see also O.C.G.A. §35-3-34). Background checks must be full GCIC checks following that agency’s rules and regulations and must not have any time period limitations or restrictions in the search criteria. Any fees charged by GCIC for processing background checks must be paid by the applicant or licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done by GCIC.

(a) If the information from the background check is unclear or incomplete, appears to address or makes reference to a felony conviction, or indicates that the employee has a criminal record in any state other than Georgia (“multi-source offender”), the applicant or licensee must immediately submit two sets of fingerprints of the person, along with the applicable processing fee and any additional information the Department may require to complete an expanded background investigation. A money order or certified check in an amount as directed by the Department made payable to the Department shall be submitted with the cards in order to have the cards processed. Applicant or licensee shall discuss the Georgia Residential Mortgage Act’s legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or licensee pending results of a fingerprint follow up investigation if no felony convictions appear on the GCIC report. If the employee is found to have disqualifying conviction data according to O.C.G.A. §7-1-1004(h), or

if the applicant or licensee knows that a disqualifying conviction is present, the applicant or licensee must immediately take action to comply with O.C.G.A. §7-1-1004(h).

Authority O.C.G.A. §7-1-61; §7-1-1012; §7-1-1004.

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